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**\*\*E-filed 6/12/09\*\***

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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

E.M. a minor, by and through his parents, E.M.  
and E.M.

Plaintiff,

v.

PAJARO VALLEY UNIFIED SCHOOL  
DISTRICT,

Defendant.

) Case No. **C 06-04694 JF**  
)  
)  
) **STIPULATED JOINT REQUEST FOR**  
) **STATUS CONFERENCE AND**  
) **~~PROPOSED~~-ORDER**  
)  
) Hon. Jeremy Fogel  
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1           **A. Background**

2           On October 17, 2008 this Court denied both parties' motions for summary judgment and  
 3 remanded the matter back to the office of administrative hearings ("OAH"). See Order Denying  
 4 Cross Motions for Summary Judgment And Remanding Case to ALJ For Further Proceeding  
 5 [Docket # 124] ("Remand Order"). In the Remand Order, this Court requested that the  
 6 administrative law judge ("ALJ") who issued the original decision provide "additional discussion"  
 7 to assist the Court in determining the substantive issues in this matter. See Docket 124 at 5:27-  
 8 6:1. In purported compliance with the Remand Order, on or about May 29, 2009 ALJ Skarda  
 9 issued a "Decision Following Remand" ("ALJ's Decision"). See Exhibit A.

10           Although this matter was closed during the pendency of the remand, both parties to this  
 11 action believe that the procedural posture of the case required a stay. See *Shapiro v. Paradise*  
 12 *Valley Unified School District*, 152 F.3d 1159, 1160 (9th Cir.1998) holding that when a federal  
 13 district court remands a case to a hearing officer for additional findings, the district court action  
 14 should be stayed pending those proceedings.

15           Counsel for each side conferred after receiving the ALJ's Decision and jointly agreed that  
 16 the parties needed guidance from the Court as to how to proceed. With that in mind, the parties  
 17 now petition this Court for a status conference in order to determine the next steps to be taken.

18           **B. Plaintiff E.M. Seeks A Status Conference And Opportunity to Brief Issue Of**  
 19 **ALJ's Compliance With Remand Order**

20           Plaintiff E.M. believes that the most recent ALJ's Decision both failed to comport with this  
 21 Court's Remand Order and failed to support his original determination that E.M. was not entitled  
 22 to receive special education. Plaintiff requires guidance on whether the Court will allow further  
 23 briefing regarding the content of the ALJ's Decision or will review the ALJ's Decision *sua sponte*.

24           **C. Defendant PVUSD**

25           Defendant Pajaro Valley Unified School District believes that the ALJ's Decision satisfies  
 26 the Court's Remand Order and the Court may rule on the previously filed motions for summary  
 27 judgment without filing further briefing.  
 28

**D. Conclusion**

The ALJ has issued a Decision in response to this Court's Remand Order. The parties are requesting a status conference in order to determine the status of this appeal and to determine if the Court will permit or require additional briefing specific to the Decision issued by the ALJ.

Respectfully submitted,

DATED: June 11, 2009

/s/ Sarah J. Fairchild

Sarah J. Fairchild

Attorney for Plaintiff, E.M.

/s/ Kimberly Smith

Kimberly Smith

Attorney for Defendant, PVUSD

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
3                                   **SAN JOSE DIVISION**

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5 E.M. a minor, by and through his parents, E.M.  
6 and E.M.

7           Plaintiff,

8  
9           v.

10 PAJARO VALLEY UNIFIED SCHOOL  
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11           Defendant.  
12  
13

)           Case No. **C 06-04694 JF**  
)  
)

) **~~PROPOSED~~ ORDER AUTHORIZING**  
) **STATUS CONFERENCE**  
)

) Hon. Jeremy Fogel  
)  
)

14 Parties jointly requested a status conference in order to determine status of Case Number 06-  
15 04694. The Court agrees that a status conference is appropriate and will calendar a status  
16 conference for the next available date. A status conference is set on June 26, 2009 at 10:30 am.  
17

18 Dated: June 12, 2009

19  
20   
21 Honorable Judge Fogel

22 U.S. District Court, Northern District  
23  
24  
25  
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